

D. PRIVATE SCHOOLS

1. Introduction

During the past year, the proposed revenue procedure on private schools, which was the focus of extensive public comment during 1978, became the subject of Congressional legislation. The proposed revenue procedure was briefly discussed in the 1979 EOATRI Textbook, Volume 1 at page 298.

The purpose of this discussion is to provide an update on the Congressional action and other developments in the area. Because of the lengthy and complete nature of the process culminating in the legislation, a brief historical review is included to put the current events in proper perspective.

2. Background

Racial discrimination in public education was held to be illegal and contrary to public policy in the Supreme Court decision of Brown v. Board of Education, 347 U.S. 483 (1954). Shortly after the decision in Brown, there were suggestions for the creation of private school systems to take the place of public school systems, which some states had threatened to abolish rather than desegregate. Efforts to establish private schools (so-called "segregation academies") in opposition to public school desegregation began in the early and mid-1960's.

The IRS response began in 1965 with the suspension of the issuance of rulings to private schools in order for the Service to consider the effect of racial discrimination on their exempt status. After extensive study, the IRS announced in 1967 that racially discriminatory private schools, which were receiving state aid, were not entitled to exemption under IRC 501(c)(3) based on public policy beginning with the Fourteenth Amendment to the Constitution.

Prior to 1970, the Service position was to recognize the exempt status of racially discriminatory private schools that did not receive state aid as the public policy against such private discrimination was not as clearly defined as the policy against public discrimination. In 1970, parents of black children attending public schools in Mississippi brought a class action to prevent the IRS from recognizing exemption under IRC 501(c)(3) and from allowing IRC 170 deductions for contributions to private schools in Mississippi discriminating against black students. In Green v. Connally, 330 F. Supp. 1150 (D.D.C. 1971), aff'd. per curiam

sub nom., Coit v. Green, 404 U.S. 997 (1971), the court held that racially discriminatory private schools are not entitled to recognition of exemption and that persons making gifts to such schools are not entitled to charitable deductions. The court placed the IRS under a permanent injunction to deny tax exemption to private schools in Mississippi that practice racial discrimination with respect to students, and ordered the IRS to implement its decision by requiring such schools to adopt and publish a nondiscriminatory policy and to provide certain statistical and other information to enable the IRS to determine if the schools are racially discriminatory.

While the litigation in Green v. Connally was occurring, the IRS announced that racially discriminatory private schools are not entitled to tax exemption whether or not they receive state aid. The injunction in Green, however, applied only to Mississippi private schools.

Since the Green decision, the Service has taken a number of steps to implement the nondiscrimination requirement including Revenue Ruling 71-447, 1971-2 C.B. 230, Revenue Procedure 72-54, 1972-2 C.B. 834, Revenue Procedure 75-50, 1975-2 C.B. 587, and Revenue Ruling 75-231, 1975-1 C.B. 158.

In 1976, the plaintiffs in the Green case reopened that suit, asserting that the Service was not complying with the court's continuing injunction that racially discriminatory Mississippi private schools be denied exemption. In addition, a companion suit, Wright v. Blumenthal, was filed, asserting that the Service's enforcement of the nondiscrimination requirement has been ineffective on a nation-wide basis.

This recent litigation prompted the Service to review the adequacy of its policies and procedures relating to the exempt status of private schools. The result of the review was the drafting of the proposed revenue procedure discussed in the 1979 EOATRI Textbook.

3. Recent Congressional Action

After the IRS and Congressional hearings described in the 1979 EOATRI Textbook, Congress passed the 1980 General Appropriations Act, P.L. 96-74, 1979-48 I.R.B. 19. The provisions affecting the Service policy toward private schools were attached as amendments to the Act, and appear at the end of this section. The amendments, named after their sponsors, Rep. Ashbrook and Rep. Dornan, expressly forbid the use of any funds for the "formulation or carrying out"

of the proposed revenue procedure during the fiscal year 1980. The prohibition on the use of funds also extends to any rule, guideline or standard which would jeopardize the IRC 501(c)(3) status of any private, religious or church-operated schools unless that "rule, policy, procedure, guideline, regulation, standard, or measure" was in effect prior to August 22, 1978, the date the proposed revenue procedure was first published in the Federal Register.

4. Recent Judicial Action

On November 26, 1979, the U.S. District Court for the District of Columbia dismissed the case of Wright v. Miller (Wright v. Blumenthal) in which the plaintiffs had hoped for an extension of the Green decision on a nation-wide basis. The court based its decision in part on the expression of Congressional disapproval of the policy contained in the proposed revenue procedure. The reopened Green case was not dismissed, but its scope has been limited to the question of whether or not the IRS has complied with the 1971 injunction issued in the original case.

5. Conclusion

The subcommittee on Oversight of the House Ways and Means Committee, which conducted hearings on the proposed revenue procedure last spring, has been undertaking a study of private schools and racial discrimination. The subcommittee intends its report to provide assistance to the Congress in formulating proposals for guiding IRS action in this area that would be more permanent than the restrictions of P.L. 96-74. Whatever the outcome, however, the proposed revenue procedure and the standards discussed in it are not to be utilized.

As of the date of this writing, we are expecting the imminent publication of specific instructions for the processing of applications for exemption from private schools and for the conduct of private school examinations. The instructions will be incorporated into the Manual in accordance with IRM 1254.

PART II. TREATIES AND TAX LEGISLATION

Subpart B.--Legislation and Related Committee Reports

Public Law 96-74

96th Congress, H.R. 4393¹

September 29, 1979

An Act making appropriations for the Treasury Department, the United States Postal Service, the Executive Office of the President, and certain Independent Agencies, for the fiscal year ending September 30, 1980, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the Treasury Department, the United States Postal Service, the Executive Office of the President, and certain Independent Agencies, for the fiscal year ending September 30, 1980, and for other purposes, namely:

TITLE I

DEPARTMENT OF THE TREASURY

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GENERAL PROVISIONS— TREASURY DEPARTMENT

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SEC. 102. None of the funds appropriated by this title shall be used in connection with the collection of any underpayment of any tax imposed by the Internal Revenue Code of 1954 unless the conduct of officers and employees of the Internal Revenue Service in connection with such collection complies with subsection (a) of section 805 (relating to communication in connection with debt collection), and section 806 (relating to harassment or abuse), of the Fair Debt Collection Practices Act (15 U.S.C. 1692).

¹ This publication of tax law is restricted to excerpts involving tax matters; House Report No. 96-248, Senate Report No. 96-299, and Conference Report No. 96-471 are not published.

SEC. 103. None of the funds made available pursuant to the provisions of this Act shall be used to formulate or carry out any rule, policy, procedure, guideline, regulation, standard, or measure which would cause the loss of tax-exempt status to private, religious, or church-operated schools under section 501(c)(3) of the Internal Revenue Code of 1954 unless in effect prior to August 22, 1978.

This title may be cited as the "Treasury Department Appropriations Act, 1980".

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TITLE VI--GENERAL PROVISIONS DEPARTMENTS, AGENCIES, AND CORPORATIONS

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SEC. 614. None of the funds available under this Act may be used to carry out any revenue ruling of the Internal Revenue Service which rules that a taxpayer is not entitled to a charitable deduction for general purpose contributions which are used for educational purposes by a religious organization which is an exempt organization as described in section 170(c)(2) of the Internal Revenue Code of 1954.

SEC. 615. None of the funds available under this Act may be used to carry out proposed revenue procedure 4830-01-M of the Internal Revenue Service entitled "Proposed Revenue Procedure on Private Tax-Exempt Schools" (44 F.R. 9451 through 9455, February 13, 1979, F.R. Document 79-4801) [Announcement 79-38, 1979-11 I.R.B. 33], and proposed revenue procedure 4830-01 of the Internal Revenue Service entitled "Proposed Revenue Procedure on Private Tax-Exempt Schools" (43 F.R. 37296 through 37298, August 22, 1978, F.R. Document 78-23515), or parts thereof.

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This Act may be cited as the "Treasury, Postal Service, and General Government Appropriations Act, 1980".

Approved September 29, 1979.